IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO. 719 OF 2007

Kareena D. Panthakey & Anr. ...Petitioners
Vs.
Municipal Corpn of Greater Mumbai & Anr. ...Respondents

Mr.G.S. Godbole, Advocate for the Petitioners
Ms. Nisha Dhabade, Advocate for BMC

CORAM: SHRI ABHAY S. OKA, J.
DATED: 30TH APRIL, 2007

P.C.

1. Heard learned Counsel appearing for the parties. By this Writ Petition under Article 227 of the Constitution of India, the Petitioner has taken exception to the order dated 16th December, 2006 passed by the learned additional Chief Judge of the Small Cause Courts, Mumbai in an Appeal filed by the Petitioners under Section 217 of the Mumbai Municipal Corporation Act, 1888. The learned Advocate for the Petitioner pointed out that the entire amount payable under Order dated 16th December, 2006 has been deposited by the Petitioner with the Respondent Corporation on 3rd February, 2007. He submitted that the amount of Rs.7,86,130/- mentioned in the impugned order is incorrect and the said figure has been incorporated in the impugned order by the learned Judge on the basis of the oral statement

made by the Advocate of the Respondent Corporation. He, therefore, submitted that the order needs interference by this Court.

2. Even according to the case made out by the Petitioner, the order dated 16th December, 2006 is complied with. However, according to the Petitioner instead of depositing the amount on or before 17th January, 2007, the same has been deposited on 3rd February, 2007. Thus according to the Petitioners, they have complied with the order dated 16th December, 2006.

3. The Appeal preferred by the Petitioners is pending. The deposit made by the Petitioners is obviously without prejudice to their rights and contentions in the pending appeal. If the Petitioners succeed in appeal it is always open for the Small Causes Court to pass an appropriate order of refund. In view of this position and in view of the statement made by the Advocate for the Petitioners as regards the compliance of the impugned order dated 16th December, 2006, the Writ Petition is not entertained. However, time granted by the Small Cause Court till 17th January, 2007 stands extended till 3rd February, 2007. Subject to what is stated above, the Petition is disposed of. The concerned Court will decide the Appeal expeditiously.

JUDGE